level of inferior service received by CLECs each month. If a 95% confidence level is being used to determine z-scores (setting the z-score critical value at -1.645), then no k values should be used to exempt further poor performance by SBC/Ameritech, as paragraph 8.c of the proposed plan provides. At the 95% confidence level, CLECs run a greater risk of non-parity performance going undetected (Type II error) than the ILEC does of non-parity being falsely detected (Type I error). The risk of Type II errors at a 95% confidence level is nearly three times as great as the 5% risk of a Type I error.[7] In other words, the CLEC is much more likely than the ILEC to be harmed by random variation that produces inferior service without remedy.

For every number of non-compliant measurements, SBC and Ameritech's plan subtracts a number of measurements from those otherwise eligible for penalty payments as the "k value". But as explained above, the probability of risk to ILEC at the 95% confidence level is less than the probability of risk to CLEC that discrimination goes undetected, so it is not appropriate to attempt to protect SBC and Ameritech from the effects of random variation without likewise protecting CLECs. But SBC and Ameritech propose to do so. Their proposal overcompensates them because it guarantees a forgiveness each month. Random variation will occur over time, not on a monthly schedule. Moreover, the use of a 95% confidence level makes it highly unlikely that a Type I error will occur each month. This monthly tossing out of noncompliant measures, particularly since there are only 20 with limited disaggregation, is a form of insurance to SBC/Ameritech that enables it to engage in discrimination each month without facing any

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[7] Statement of AT&T statistician, Dr. Clark Mount-Campbell, February 1999, in California Public Utilities Commission Rulemaking 97-10-016 to determine performance monitoring for OSS of Pacific Bell and GTE California.

consequences. Therefore, the k-value table should be excluded from calculating SBC/Ameritech's performance.[8]

Timing. SBC and Ameritech should each be required to implement all of performance standards and measures before they close on the merger, and in all SBC and Ameritech states, including Connecticut. If they are as close to compliance as they suggest they are, each of them can meet this deadline and spare the Commission in the compliance issues that would otherwise doubtless occur.

The self-executing remedies prescribed for non-compliance should be available as soon as the standards become effective. No justification exists for excusing SBC and Ameritech from these remedies for non-compliance for nine full months, and fifteen in Connecticut, as paragraph 2 would permit. This proposal would, without any grounds, leave CLECs without the prescribed remedy for non-compliance, and for a substantial period of time.

Inadequacy of Remedies. One of the primary problems with the remedy proposal is that the remedy amounts are far too low to discourage SBC/Ameritech from providing substandard service to CLECs. *See* Attachment A-4. In many cases, the $25, $75 or even $150 payment is less than a non-recurring or recurring charge that the CLEC must pay for the underlying service or element, as well as grossly inadequate to modify the ILEC's incentive to discriminate. Capping a measure at a specific dollar amount actually encourages SBC/Ameritech to deliver worse service because SBC/Ameritech knows that no matter how poor the performance is, it will

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[8]MCI WorldCom also would agree to an equal risk confidence level that sets the critical value at –1.04) to balance the chance of Type I and Type II errors equally at 15% each. *See* Attachment 2.

only have to make one flat payment. Equally troublesome is the proposal to cap the amount of remedies any one CLEC can receive at 10 percent of the total. This could deny a remedy to CLECs that submit the most orders to SBC/Ameritech and that are harmed the most by SBC/Ameritech's discriminatory performance.

Accordingly, if the Commission retains this misguided hierarchy of remedies, the remedies should be increased to levels that will serve as full remedies and effective deterrents, not as a sale price for discrimination. For example, the remedy amounts should all be "per measurement" amounts and should be increased to at least $30,000 for High, $25,000 for Medium, and $15,000 for Low categories of remedies, depending on the measure. Per measurement remedies at these levels will provide an incentive for SBC and Ameritech to fix problems that are impeding CLECs' ramp-up. The pro-consumer way for SBC and Ameritech to limit the total payments is to meet their obligations and provide CLECs the quality of service to which they are entitled. Any artificial limits on remedies is particularly dangerous because chronic substandard performance may deter CLEC entry, enabling SBC/Ameritech to limit its exposure by engaging in more widespread discrimination.

In addition, the Commission should modify paragraph 8.b of the proposal to include in the "High" category both blocking performance on common/shared transport trunks (measurement 18) and OSS availability (measurement 14), so that CLECs will receive some compensation for the tangible and intangible harms caused by SBC/Ameritech's failure to meet these standards.[9] More generally, Attachment _ to these comments (MCI WorldCom and

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[9]The Commission has "emphasize[d] that the standard for negotiated enforcement mechanisms is 'to ensure compliance with each standard,' which may, in some cases, go beyond

AT&T's joint proposal filed on June 2, 1999, as an *ex parte* with the Commission) describes a superior, and simpler, two-category structure with only two levels of remedies — Immediate Customer and Competition Affecting Measures ($30,000) and Lagging Customer and Competition Affecting Measures ($20,000).

SBC and Ameritech propose unexplained variations in designations over their three-year duration: in some instances, a measure is designated as Low in the first year and High in year two or three; in others, it is Medium for the first two years and then High in the third year. *See* Attachment A-3. The Commission must determine whether SBC and Ameritech's rationale for these variations is reasonable, with CLECs having an opportunity to comment after SBC and Ameritech explain their rationale. In addition, SBC and Ameritech should not pay less if they provide poor service to CLECs in the first year than in later years. This insufficient deterrence could be disastrous for CLECs as they try to build market share. CLECs' dependence on SBC/Ameritech may be less in the third year to the extent that CLECs will gradually build out their own facilities. However, any poor performance will still require a remedy since the CLEC is relying on the ILEC for that particular service. The Commission should specify payment amounts for all three years at the highest of the options.

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compensation for tangible economic harm." Memorandum, Opinion and Order, *In the Application of Nynex Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of Nynex Corp and Its Subsidiaries*, 12 F.C.C.R. 19985, ¶ 194 (1997). Certainly Common Transport Trunk blockage and OSS Interface Availability measurements should not be completely exempt from liquidated damages. CLECs are harmed by trunk blockage or the inability to access OSS during scheduled hours of operation. SBC/Ameritech would not make the same assumption about its own retail operations. This exemption from performance penalty is another example of the illusory nature of the SBC/Ameritech OSS proposal.

At least equally important, the Commission should eliminate all monetary caps from the plan. The monthly, annual, and state caps are arbitrary. The Commission has no basis to determine at this time that SBC/Ameritech's level of compliance will be high enough to avoid triggering these remedies; if SBC/Ameritech's performance turns out to be worse, it should suffer the consequences. Additionally, caps create the wrong incentives for SBC/Ameritech: the cost of non-compliance must exceed the competitive benefits of non-compliance in order to induce SBC/Ameritech to choose compliance, and not to treat violation of the performance standards as a tolerable cost of doing business in a continued monopoly environment.

SBC and Ameritech is correct in acknowledging that long-term poor performance dictates that the remedies increase (Attachment A-4). However, remedies should increase not only for duration of misses but also for the magnitude of the miss. A ten-day miss should have a higher financial consequence than a one-day miss since the harm to the CLEC is indisputably much greater. A plan that calibrates the amount of the remedy to both the magnitude and the duration of the miss is included in Attachment 2 to these Comments (MCI WorldCom and AT&T's joint June 2 proposal to the Commission).

In addition, the plan should make clear that any damages, liquidated or otherwise, available under paragraph 8.a of Attachment A do not limit CLECs' ability to recover additional damages necessary to make them whole or to obtain equitable remedies, as the last sentence of paragraph 11 appears to do to the extent the proposal is incorporated into interconnection agreements. The proposal also would permit SBC and Ameritech to offset any remedies under their plan by remedies paid under presumably more rigorous state plans, but they do not explain

how the offsets would apply; for example, no offset should be made for any remedy for non-compliance with a state requirement not established as a condition for merger approval.

Access Discrimination. SBC and Ameritech should also provide monthly reporting on special access and switched access service quality for CLECs and provide remedies for substandard performance. MCI WorldCom relies on use of access lines purchased through the interstate special access tariffs to provide local service and has seen deterioration in provisioning and repair performance for these services. By requiring reporting and remedies on the special and switched access services used for local service as well as access, the Commission can help deter and remedy all means of ILEC discrimination against current local and future long distance competitors.

Complete and Timely Performance Data. In addition to performance measurements and self-executing remedies, SBC/Ameritech must provide on a regular, timely basis accurate information about their performance. SBC and Ameritech should explain how they will collect the data. SBC-SWBT recently submitted its proposal for data collection flows in Texas, for example, which contains many problems. Proper data collection flow rules are needed to ensure that the measure captures everything that it intended to capture and that SBC/Ameritech's performance actually meets that standard. For this reason, the conditions should require SBC/Ameritech to provide data collection flows on each measure.

Process. CLECs should have input concerning any subsequent proposal by SBC/Ameritech to modify any performance criteria that the Commission has imposed as a merger condition. Paragraph 4 of Attachment A provides for no CLEC role. Because the

measures are so critical to local competition, CLECs need to have a say concerning a plan intended to protect them from their supplier-competitor.

II. COLLOCATION

In paragraph 3, SBC and Ameritech generously agree to comply at some time with their existing legal obligations concerning collocation. Their agreement to obey the law provides no basis to approve the merger or support a finding that the conditions generate substantial public interest benefits that offset the reduction in competition caused by the merger in SBC and Ameritech's regions. No transfer of licenses should occur unless and until the Commission finds that SBC and Ameritech have fully implemented the Commission's collocation rules. Equally important, recurring and non-recurring changes for collocation must be reasonable and nondiscriminatory.

Similarly, paragraph 4 merely requires SBC and Ameritech to implement the Commission's rules using the two methods that would be required in any event — tariffs or amendments to interconnection agreements. Regrettably, however, SBC/Ameritech's ability to make unilateral changes in collocation policy through tariff changes is unrestricted, leaving CLECs at the mercy of SBC/Ameritech and their business plans subject to constant flux. No fixed date is required for compliance because paragraph 3 permits SBC and Ameritech to satisfy this condition at any time up to the closing. Indeed, the proposal would continue the glacial pace at which SBC and Ameritech have been proceeding by, for example, giving them two months to submit even preliminary audit requirements in paragraph 6.a. A number of state commissions are in the process of fixing some of the problems with SBC's and Ameritech's current collocation policies and practices, and the Commission should make clear that collocation-related

conditions set only a floor and that state commissions are free to establish stricter requirements in any state proceedings.

The other portions of the collocation-related conditions lay out a procedure for an audit of SBC/Ameritech's compliance with the Commission's rules. MCI WorldCom has no objection to an audit, but the proposed audit will do little to ensure compliance. For example, SBC and Ameritech can hand-pick the auditor. A company that had a substantial role in designing key systems and processes under review should not be permitted to conduct the audit, even if it was not "instrumental" in designing "substantially all" these systems and processes, because it has an obvious incentive to approve those systems and processes it helped to design. In addition, paragraph 6.d would permit, but not require, the auditor to contact CLECs, but it is impossible to imagine that any thorough and reliable audit could be conducted without hearing from the entities most directly affected. The condition should also clarify what collocation policies and practices will be audited because the periodic changes in those policies and practices that are bound to occur will give the auditor a moving target.

Moreover, the condition must provide for a Commission determination on a fixed, expeditious schedule about whether the auditor correctly found that SBC/Ameritech complied with the Commission's collocation rules, and no transfer of control should be permitted unless and until the Commission itself finds that SBC and Ameritech have complied. To that end, the procedure should give interested parties access to confidential information under an appropriate protective order so that the Commission can make an informed, balanced decision about whether the auditor's findings are correct.

If SBC and Ameritech are out of compliance with the Commission's rules, the condition should impose, to the extent practicable, substantial and automatic financial consequences. However, the difficulty in crafting appropriate self-executing remedies for some violations of that order makes it all the more important to require compliance as a pre-condition to the transfer of control. The incompleteness of the proposed performance measures and remedies for collocation (*see* Attachment 1) exacerbates the risk of non-compliance.

The collocation condition should specify that the procedures and any remedies for its violation are separate and independent for procedures for violation of the underlying collocation rules, so, for example, CLECs will have effective remedies for violation of the Commission's rules before the auditor's report is submitted ten months after closing (paragraph 6.e). The fact that audit will be "in lieu of any other audit" (paragraph 7) should not mean that this "remedy" is exclusive.

III. OSS: UNIFORM INTERFACES

MCI WorldCom agrees that it is vital for the conditions to ensure that SBC and Ameritech finally comply with their obligation to provide efficient, reliable, scalable, and nondiscriminatory Operations Support Systems ("OSS"). SBC and Ameritech have already violated the Commission's January 1, 1997 deadline for well over two years. Compliance with the Commission's requirements for OSS is essential to permit local competition to develop through the use of UNEs singly and in combination. Requiring SBC and Ameritech to provide uniform OSS interfaces throughout their regions is another important step that will lower barriers to entry, especially for regional and national CLECs like MCI WorldCom.

Unfortunately, the proposed OSS conditions do not meet their laudable objectives. SBC and Ameritech have too much time to comply, and the proposed requirements are inadequate, incomplete, and unnecessarily complicated. As structured, the proposal guarantees that the Commission will be embroiled in continuing efforts to bring SBC/Ameritech into compliance.

Rapid Implementation. SBC and Ameritech's proposal would mean that a minimum of 2 ½ years would pass before they comply with the uniformity requirements for application-to-application and graphical user interfaces in paragraphs 11 and 14: they give themselves five months after closing to submit a proposal in Phase 1; they allow one month for a workshop and arbitration of unresolved issues in Phase 2; and then they give themselves two full years for development and deployment in Phase 3. In fact, with their existing incentives, it is clear that Phase 2 would take much longer. Workshops or collaboratives under the auspices of state commissions have proven to be very useful in addressing design and business rules issues, and they have generally taken 6-12 months. It is realistic to expect that SBC and Ameritech would not agree to resolve all issues to CLECs' satisfaction in the workshop and that the subsequent arbitration will take at least six months.[10] As a result, it is likely that the condition will sunset at the end of its three-year term pursuant to paragraph 68 before SBC/Ameritech complies with it.

The condition therefore needs to be restructured to ensure that SBC and Ameritech comply within a reasonable time and remain in compliance for a reasonable time. The best approach would be to require full compliance with the uniform interface requirements before

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[10]These deadlines reflect a strong bias in favor of the proposal's authors. SBC and Ameritech get five months to develop a plan in Phase 1 (paragraphs 11.a and 14.a), but they give CLECs only one month to digest and analyze that plan and work through all of the issues in a single workshop for all SBC and Ameritech states.

SBC and Ameritech may close.[11] At a minimum, the design and development process should be completed before closing, and the period for deployment after closing should be limited to eighteen months, not two years. SBC and Ameritech will have time to prepare for implementation, and they have the resources and expertise to accomplish deployment in a more reasonable time frame. The uniformity requirement should remain in effect until SBC and Ameritech demonstrate that it is no longer useful (*see* pages 63-64 below) or, at a minimum, for three years after SBC and Ameritech achieve full compliance.

Comprehensive Plan. The various plans required in paragraphs 8, 11.a, and 14.a should be consolidated into one comprehensive plan — that the Commission reviews and approves before any closing, as discussed above. Such a plan is the critical first step to ensure the development and implementation of the necessary interfaces in a timely and efficient manner, and to enable CLECs to plan efficiently and avoid waste of resources. In addition to the requirements of these paragraphs, the comprehensive plan should contain a change management process that will eliminate disruptions to CLECs due to unilateral OSS changes by SBC/Ameritech.

The requirement regarding the development of uniform application-to-application interfaces and graphical user interfaces ("GUI") in paragraph 11 should be combined with paragraph 14's requirement to develop business rules. Business rules are not separate from an interface; they are part of the interface. For pre-ordering, ordering, and provisioning, for

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[11]The rationale for giving SBC and Ameritech more time to comply with certain requirements in Nevada and Connecticut is not explained. SBC and Ameritech should bear a heavy burden of justification for exceptions that would defeat the basic goal of uniformity.

instance, the business rules and EDI specifications are complementary pieces of the interfaces and should be developed and implemented as part of the same process.

More generally, and more fundamentally, the merger conditions must define the term "uniform" in this context. The Commission has already recognized the importance of uniform interfaces to local competition in its Bell Atlantic/NYNEX merger decision, noting that CLECs need uniform interfaces in order to develop, test, and implement interfaces in one state and use the same interfaces to move easily, without significant retesting or additional development, into other states.[12] Bell Atlantic has tried to take advantage of the absence of an explicit definition of "uniform" interfaces.[13] The electronic interfaces that handle transmissions between interfacing carriers need to be specified in a precise set of rules and implementation guidelines, including data models and associated specifications, and transport protocol and security protocol specifications.[14] In order for these interfaces to be uniform, all of these elements must be

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[12] *See* Memorandum, Opinion and Order, *In the Application of Nynex Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of Nynex Corp and Its Subsidiaries*, 12 F.C.C.R. 19985, ¶¶13-14, 183, 195, 196 (1997).

[13] MCI WorldCom and AT&T filed a joint complaint against Bell Atlantic for its failure to offer uniform interfaces as required by the Bell Atlantic/NYNEX merger order, and the primary issue is the meaning of the term "uniform interfaces." *See MCI WorldCom, Inc. and AT&T Corp. v. Bell Atlantic Corp.* (filed June 30, 1999). As a result, the Commission is only now faced with defining "uniform interface," two years after approval of the merger and two years before the conditions sunset.

[14] Business rules include the nature and scope of the business transactions the interfacing parties conduct together, identifies what information must be exchanged, and identifies the syntax and permissible set of values associated with the exchanged information, so the information can be accepted and processed by the receiver. Data models provide the rules for translating the information conveyed into the agreed upon computer language for transmission across the interface. The transport and security protocols describe exactly how the transport vehicle will be configured to carry the transmissions.

uniform. Otherwise, a CLEC will not be able to interact in the same way with any SBC or Ameritech ILEC, and the basic purpose of the uniformity requirement will be defeated. For these reasons, the proposal should specifically define the term "uniform interfaces":[15]

> *Uniform interface* - A uniform interface must use precisely the same business rules, data formatting specifications, and transport and security specifications across the entire SBC and Ameritech regions, thereby enabling a CLEC to use an interface developed and implemented in one SBC and/or Ameritech state in every other SBC and Ameritech state.

In addition, the provisions of paragraph 12 relating to the SORD system (and equivalents) should be considered as part of OSS functionality and addressed in paragraph 11. Although paragraph 12 refers to "direct access" to SORD, SORD is a service ordering processing system involving the five primary required OSS functions. SORD should be treated as part of SBC and Ameritech's core obligation regarding OSS.

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[15]The Commission should also define the terms "industry standard interface" and "interface implementation" as MCI WorldCom included in its Proposed Pre-Conditions filed by *Ex Parte* Letter, May 6, 1999. These terms are defined as follows:

> *Industry standard interface* - An interface based on the ATIS industry standards must comply with the industry standards or guidelines. It must accommodate every industry standard field and valid value and must use only industry standard fields and valid values, except that the interface may deviate from the standards where necessary to provide CLECs with nondiscriminatory access to the relevant OSS function.
>
> *Interface Implementation* - An interface will be considered implemented only after it is proven by independent third-party testing and carrier-to-carrier testing to provide nondiscriminatory operational access to the relevant OSS function at commercial volumes of transactions, and to include a comprehensive and functioning change management process.

Payments for Non-Compliance. MCI WorldCom agrees that, as paragraphs 11.a, 11.c, 14.a, and 14.c provide, SBC and Ameritech should face self-executing financial consequences if they fail to comply with the deadlines for uniform OSS interfaces. This payment, however, needs to be large enough that it will be more than just a "cost of business." The payment has to be sufficient to make the cost of non-compliance exceed the cost of compliance. A total exposure of $30,000,000 under paragraphs 11.c, 14.c, and 16.c(3) does not meet this standard. Compliant OSS is essential to permit CLECs to use UNEs to compete. Impeding the viability of UNE-based competition for all services, including DSL, would have enormous value to SBC/Ameritech by preserving their monopoly position and resulting huge monopoly profits.[16]

Accordingly, the Commission should establish a schedule of payments that it determines exceed the cost of compliance in present and future lost monopoly profits. One option would be for SBC and Ameritech to make a major up-front commitment, such as a performance bond of $500 million, before merger close to provided added assurance that the needed interfaces will be developed and deployed on time. If SBC and Ameritech fail to implement industry standard interfaces on a uniform basis throughout their regions or to meet any of the deadlines provided in this condition, SBC and Ameritech would forfeit the performance bond.

OSS Testing. OSS-related conditions should provide for independent third-party and carrier-to-carrier testing of the full spectrum of OSS functions. SBC/Ameritech's compliance

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[16]The bias of the proposal in SBC and Ameritech's favor is further illustrated by the fact that they can cut their exposure in half (from $20,000,000 to $10,000,000) by deploying uniform interfaces but not the uniform business rules that permit CLECs to get access to these interfaces on a truly uniform basis. SBC/Ameritech can defeat the purpose of the uniformity requirement by failing to implement either aspect of it.

with the entire OSS section of conditions should be verified by successful testing. This testing must show that SBC/Ameritech's interfaces and related back-end systems comply with the applicable standards and guidelines, that they are uniform across all regions, and that they support seamless (that is, without manual intervention) end-to-end interoperability for all five core OSS functions — pre-ordering, ordering, provisioning, billing, and maintenance and repair. This testing should be completed for a full range of business case scenarios, and at commercial volumes. Only through this testing can CLECs be assured that SBC/Ameritech has achieved the goals of operational nondiscrimination and uniformity.

The merger conditions should therefore be amended to include both testing by requesting carriers and independent testing by a third party. These two critical types of testing serve different purposes. Carrier-to-carrier testing requires that SBC and Ameritech engage in testing with a requesting carrier, no later than 30 days after the request, using commercial and non-commercial orders to ensure compatibility between the two carriers. Independent third-party testing of OSS systems requires that SBC and Ameritech engage in full spectrum, end-to-end testing of OSS functioning and processes. The independent third-party should be selected by the Commission with input from the relevant state commission, SBC and Ameritech, and CLECs. Testing would culminate in a report to the Commission, state commissions and interested parties. SBC and Ameritech should bear the cost of third-party testing.

Change Management. SBC/Ameritech does not need twelve months to implement a change management system. SBC and Ameritech are not starting from scratch. Many of the SBC and Ameritech states already have a change management process in place, some of which include effective features. An effective change management system is absolutely critical for

CLECs trying to develop OSS systems in the local exchange market, especially in light of all of the work that needs to be done with respect to OSS interface changes and enhancements as indicated by these merger conditions. A change management process is necessary to prevent, or at least minimize, disruption of CLEC access to OSS during development and implementation and through a reasonable transition period.

The following minimum requirements should be included in a complete change management process:

- Establishment of an ILEC/CLEC collaborative forum with equal authority for "change issue" acceptance and prioritization by the SBC/Ameritech and CLECs;
- Successfully tested operational production baseline implementation with complete and accurate matching specifications;
- Proper notice and documentation from the ILEC of all issues proposed for change;
- Sufficient time for CLEC review, comment, and collaborative discussion with respect to each issue;
- A formal, recorded ILEC/CLEC collaborative decision to make and prioritize a change;
- Issuance of accurate and complete specifications for the OSS interface change by the ILEC with enough time for all parties to develop, implement, and test the change;
- Complete testing of the change, beginning with regression testing to ensure that no previously working functions have been disrupted by the change; and
- Accurate documentary revisions reflecting the change.
- Escalation procedures to address disputes that may arise between SBC/Ameritech and the CLECs.

Arbitration. The proposal allows SBC and Ameritech to limit the Commission's choice of subject matter experts to consult with the independent arbitrator to three firms hand-picked by

SBC and Ameritech. Paragraphs 11.b, 14.b, and 16.c. This provision is unfairly skewed in SBC and Ameritech's favor. SBC and Ameritech's singling out of Telecordia, about whose independence substantial questions have been raised, only underscores the inappropriateness of allowing SBC and Ameritech to exercise more control over the process than other parties. As a matter of fairness, given the reliance that the arbitrator may place on the subject matter expert, all parties should have an equal opportunity to recommend such experts to the arbitrator and the Commission. The proposal should also explain the standard the Chief of the Common Carrier Bureau will use to determine whether submission of unresolved issues to consolidated binding arbitration is in the public interest

OSS for xDSL. Business process rules for xDSL (and some other services) have not been completely addressed and published by the Ordering and Billing Forum ("OBF"), and because of the rapid pace of technological change, the initial Process Improvement Plan Report of Record in paragraph 16.c(1) should include any business functionality under review but not yet published by ATIS which has been requested by CLECs in the collaborative. In addition, the access that SBC and Ameritech promises to provide for Datagate and Varigate is not adequate for CLEC purposes because it is good only for ADSL. Because it appears that SBC will mechanize ordering and pre-ordering for its own xDSL services in SWBT states, CLECs should have access to the same capabilities on a nondiscriminatory basis.[17]

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[17]*See* Texas Public Utilitiy Commission Docket Nos. 20226, *Petition of Accelerated Connections, Inc. d/b/a ACI Corp. for Arbitration to Establish an Interconnection Agreement with Southwestern Bell Telephone Company,* and 20272, *Petition of DIECA Communications, Inc., d/b/a Covad Communications Company for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with Southwestern Bell Telephone Company,* April 14, 1999, *Southwestern Bell DSL Methods and Procedures.*

IV. OSS: WAIVER OF CHARGES

MCI WorldCom agrees that neither SBC nor Ameritech should charge for the use of standard electronic interfaces for accessing OSS, as paragraph 18 provides. This proposed condition does not produce any significant public interest benefit because the charges of an efficient ILEC should be, at most, close to zero under TELRIC principles.

V. OSS: ASSISTANCE FOR SMALL CLECS

MCI WorldCom has no comment except to note that SBC and Ameritech's failure to provide adequate information and assistance to *all* CLECs, large and small, has been a serious problem.

VI. xDSL AND ADVANCED SERVICES DEPLOYMENT

SBC and Ameritech's proposed undertakings concerning advanced services deployment generally advance the same obstructionist position they have espoused in the past. Examination reveals that their promises are not magnanimous gestures to encourage competition, but at best small and doubtful steps that fail to solve the underlying problems that CLECs face in deploying advanced capabilities over ILEC loops. Indeed, it is not a stretch to conclude that SBC and Ameritech's promises are nothing more than a continuation of their long-term efforts to frustrate CLEC competition using advanced technologies.

Pre-Condition. Paragraph 21.b would give SBC/Ameritech almost two years after closing to provide loop pre-qualification information through non-discriminatory OSS in more than half of its states. If SBC and Ameritech were truly committed to meeting their existing obligation, they would complete deployment in substantially less time in the Ameritech states, Nevada, and Connecticut. In order to shorten that time and give SBC and Ameritech an

incentive to live up to this commitment, full implementation of this OSS condition should be a pre-closing requirement for *all* SBC and Ameritech states. If it is not made a pre-condition, the Commission should establish an expedited process for resolving disputes, and establish sufficient self-executing remedies for failure to comply with the condition.

Moreover, SBC and Ameritech do not need twelve months after closing to comply with their commitment in paragraph 22 to provide nondiscriminatory, electronic pre-order Internet access to loop pre-qualification information for xDSL services. This substantial delay would give SBC/Ameritech a substantial head start and permit it to acquire significant market share with no threat of meaningful competition from CLECs. Here again, SBC and Ameritech should satisfy this commitment before closing — or face immediate, certain, and substantial financial consequences if this remains a condition that need not be satisfied until after closing.

Inadequate Information. SBC and Ameritech need to provide more information so that CLECs can compete effectively to provide DSL services. The meager information SBC and Ameritech offer to provide for loop pre-qualification is woefully insufficient for the deployment of broadband services. The information that SBC and Ameritech propose to provide may not give MCI WorldCom and other CLECs sufficient information about a loop to specify the class of service it could deploy. CLECs depend on the completeness, as well as the accuracy and speed, of loop pre-qualification information so that they can fill customer orders as reliably, efficiently, and promptly as SBC and Ameritech. The information necessary for CLECs to assess what types of DSL service they can offer includes, but is not limited to, DLC presence, loop length, gauge, and known spectral deployment limitations. SBC and Ameritech's proposal is inadequate in several respects. In paragraph 21.a, SBC and Ameritech agree to provide loop pre-

qualification based on whether the loop length is less than 12,000 feet, between 12,000 and 17,500 feet or greater than 17, 500 feet from the customer premises to the central office. These proposed break points are only good for ADSL services, and CLECs want to offer other members of the entire family of DSL services. Although these boundaries may be acceptable for copper design rules, they are not applicable for deployment of xDSL services because the reach of some xDSL technologies is less than 12,000 feet and others have a reach which exceeds 20,000 feet. Moreover, as services such as SDSL, VDSL and others are deployed, these loop length ranges will change even more.

For the qualification process, it is imperative that the CLEC have access to information about the loop characteristics, conditioning requirements and disturber identification, but nothing in the proposed conditions even remotely addresses these critical issues.

Spectrum Management. The proposed conditions completely dodge the critical issues associated with spectrum management. SBC and Ameritech should commit to: (i) allow spectrum standards and power spectral density masks to be set by an independent industry group, such as T1E1.4; (ii) allow spectrum administration and dispute resolution to be run by a neutral third party administrator; and (iii) randomly assign technologies within binder groups and not to segregate technologies within separate binder groups. If the Commission does not require SBC and Ameritech to comply with a comprehensive set of spectrum management requirements before closing, it should, at a minimum, require them to abide by any rules adopted in the pending proceeding, subject to monitoring of compliance by an independent third party.

Excessive Rates. The interim loop conditioning rates proposed by SBC and Ameritech in paragraph 24 and Attachment C are, simply put, excessive. The proposed interim $360-$980

rate for non-recurring line conditioning charges would protect their continued dominance of xDSL technologies. SBC and Ameritech seek to impose charges for the removal of load coils, repeaters and "excessive" bridged taps for the conditioning of loops. However, in California, SBC has conceded that the recurring costs on which Pacific Bell bases its proposed price for unbundled DSL-capable loops reflects a network design that does not include load coils, repeaters or excessive bridged taps.[18] The Michigan commission determined that Ameritech's cost-based rates should include, if they do not already, routine conditioning costs.[19] For that reason, it would be unfair and unreasonable for Pacific Bell, or any other SBC or Ameritech ILEC, to double-recover for non-recurring costs that assumes the need for conditioning the loop based on a different and inefficient network design.

Before the Commission should accept these non-recurring charges for xDSL loop conditioning, it should require SBC and Ameritech to demonstrate that they are justified under a TELRIC analysis consistent with the Commission's rules. A TELRIC cost study should show that cost-based charges would be zero because an all-copper network (under 18,000 feet) efficiently designed to provide DSL services would not include load coils, repeaters and excessive bridged taps.[20] It has been standard engineering practice for many years to design

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[18]*In the Matter of Petition of Pacific Bell for Arbitration of an Interconnection Agreement with MFS/WorldCom Pursuant to Section 252(b) of The Telecommunications Act of 1996.* A.99-03-047 (Filed March 22, 1999) at Ex. 13, Moore Direct at 3(14)-6(2).

[19]*In the matter of the complaint of BRE Communications, L.L.C. d/b/a Phone Michigan, against Ameritech Michigan for violations of the Michigan Telecommunications Act*, Opinion and Order, at 24-25 (Michigan Public Serv. Comm'n Case No. U-11735 Feb. 9, 1999).

[20]*See, e.g.*, Hatfield Model, Version 5.0, Model Description at 17 and Inputs Portfolio at 43 (filed jointly by AT&T and MCI, Dec. 11, 1997). Loops longer than 18,000 feet should also be made available to CLECs to provide IDSL service, which can extend up to 35,000 feet.

POTS loops under 18,000 feet in length so that they do not include load coils or repeaters. Therefore, there should be no need to remove any equipment on loops 17,500 feet or shorter. To the extent that SBC and Ameritech's loop plant does not conform to well-established engineering practices, SBC and Ameritech should bear the costs associated with bringing the non-standard plant to accepted design for analog POTS loops. Shifting those costs to CLECs would be inconsistent with the TELRIC methodology.

The proposed rates do not conform with TELRIC methodology in other respects. First, they do not seem to take into account the economies of (i) removing load coils or repeaters for an entire binder group of at least 25 pairs at a time (according to standard industry practice), or (ii) performing multiple types of "conditioning" on the same loop. Moreover, we have little doubt that these rates reflect the same kinds of inflated task times that have afflicted SBC and Ameritech's non-recurring cost studies, and the rates likely include unnecessary and improperly bundled costs for restoring bridged tap in a manner that is inconsistent with a forward-looking network design.

For these reasons, the conditions proposed by SBC and Ameritech should be significantly modified to facilitate, and not hamper, the deployment of xDSL services by new entrants.

VII. STRUCTURAL SEPARATION FOR ADVANCED SERVICES

MCI WorldCom agrees that the Commission should require SBC/Ameritech to provide advanced services through separate affiliates because separation can help enforcement of the unbundling, resale, and nondiscrimination requirements of section 251(c).[21] However, any such

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[21]Reply Comments of MCI WorldCom, Inc., at 11-13, *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability* (filed Oct. 16, 1998)

affiliate is necessarily subject to the unbundling and resale requirements of section 251(c) because it is a "successor" or "assign" of the ILEC, and a comparable carrier, within the meaning of section 251(h) and because section 10(d) expressly prohibits the Commission from forbearing from applying the requirements of section 251(c) prior to their full implementation.[22] Although the Commission has not resolved these legal issues in the pending advanced services proceeding, paragraph 28 of the proposal provides that transfer of equipment would not cause the affiliate to be deemed a successor or assign, paragraph 36 would commit the Commission to regulate the affiliate as a non-dominant carrier, and paragraph 39 terminates the separation requirement if the advanced services affiliate is deemed a successor or assign. To the extent that the proposed condition requiring a (partially) separate affiliate assumes that SBC/Ameritech can escape the requirements of section 251(c) by providing local services using advanced capabilities through an affiliate, that assumption is legally untenable. Indeed, the Commission cannot decide whether to accept this proposal until it decides in the advanced services proceeding whether it has any legal authority to deregulate such affiliates.

Separation requirements should be imposed for advanced services because separation performs a useful role even though it does not permit an ILEC to avoid its obligations under section 251(c). However, the proposed degree of separation should be increased to achieve this limited and legitimate purpose, and to maximize the independent operation of the affiliate, while

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("MCI WorldCom § 706 Reply Comments").

[22]Comments of MCI WorldCom, Inc., at 5-6, *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability* (filed Sept. 28, 1998) ("MCI WorldCom § 706 Comments").

recognizing that no wholly-owned ILEC affiliate can ever operate truly separate from the ILEC.[23] Although paragraph 27 would impose less stringent separation requirements than those contained in section 272, the Commission should require the advanced services affiliate not only to meet the requirements of section 272 but also to implement additional safeguards.[24]

At a minimum, the proposal should be strengthened or clarified in several important respects:

- SBC and Ameritech should be required to provide advanced services through affiliates that meet all of the separation requirements *before* they may complete the merger — not only in states where SBC or Ameritech already has established an advanced services affiliate (*see* paragraphs 30.b and 31.a). At a minimum, the Commission should establish strict deadlines for compliance after closing. For example, the proposal gives SBC/Ameritech an unlimited amount of time to obtain any necessary state approvals for the affiliate (paragraph 30.d). If a state commission grants such approvals promptly, all advanced services functions should be provided immediately by the affiliate, which does not need a minimum of six months from closing as paragraph 36.c allows. Similarly, SBC/Ameritech ILECs should end exclusive arrangements with affiliates as soon as an affiliate obtains state approval; they do not necessarily need six months to comply (*see* paragraph 27.c). Nor does SBC/Ameritech need a year to provide line sharing on a nondiscriminatory basis once even it agrees that it can be implemented (paragraph 33).

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[23]MCI WorldCom § 706 Comments at 13-14, 26.

[24]*See generally* MCI WorldCom § 706 Comments at 28-30, 41-44; MCI WorldCom § 706 Reply Comments at 40-46.

- The Commission should require any SBC/Ameritech ILEC to treat the advanced services affiliate on an arm's length basis and to do so from the outset.[25] For example, the ILEC should not be permitted to provide to the affiliate even temporarily any advanced services functionality (paragraph 27.c), to share the same space as the affiliate (paragraph 27.e), to transfer customers to the affiliate (paragraph 31.c and 3.e),[26] to allow the affiliate to use its brand name (paragraph 27.d),[27] or to transfer equipment to the affiliate (paragraph 28).[28] The ILEC and the affiliate should be required (not merely permitted) to separately own, and maintain, advanced services equipment (paragraph 27.c). The ILEC should not be permitted to market advanced services provided by the affiliate when consumers contact it with respect to non-advanced local services (paragraph 27.a). The open-ended exception permitting the ILEC to perform undefined "customer care" functions on a discriminatory basis for the affiliate (paragraph 27.a) should be eliminated.
- The Commission should specify the charges, or at least a process and schedule for establishing the charges, for services, elements, and features that the affiliate purchases from the ILEC. For example, at what rate will the affiliate compensate SBC/Ameritech ILECs for joint marketing and other functions (paragraph 27) and for use of the ILEC

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[25]*See generally* MCI WorldCom § 706 Comments at 32-41.

[26]MCI WorldCom § 706 Comments at 34-35.

[27]MCI WorldCom § 706 Comments at 33-34.

[28]Any transfer of equipment to the affiliate, by itself, requires the affiliate to be treated as a successor of the ILEC. MCI WorldCom § 706 Comments at 45-48; MCI WorldCom § 706 Reply Comments at 46-49. The contrary provision is paragraph 28 is inconsistent with section 251(h).